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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

9 KELLY BURNS, TROY BURNS, and the
10 community property comprised thereof,
Plaintiffs

Case No.

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(a)**

v

13 CREDIT CONTROL, LLC, a Missouri
Limited Liability Company.

14 Defendant.

16 PLEASE TAKE NOTICE THAT defendant removes to this court the state court
17 action described below.

18 1. This is a civil action over which the court has original jurisdiction under
19 28 U.S.C. § 1331, and which may be removed to this court under 28 U.S.C. § 1441(a),
20 because it involves claims under the Fair Debt Collection Practices Act, 15 U.S.C.
21 § 1692 *et seq.* (“FDCPA”).

22 2. Plaintiff purported to serve a summons and complaint on defendant. No
23 case number was included and, to defendant's knowledge, the complaint has not been
24 filed. A copy of the summons and complaint are attached as Exhibit A.

25 //

26 //

3. This Notice of Removal is timely because the earliest that plaintiff started to serve defendant was on or around October 25 2018.

4. Venue is proper in this district because it is the district embracing the
where the action is pending. See 28 U.S.C. § 1441(a).

5. Defendant is unaware of any further proceedings that have occurred in the

6. In filing this notice, defendant does not waive any defenses or claims
ing (but not limited to) any defenses based on jurisdiction, service or statute of
ions.

DATED: November 21, 2018

COSGRAVE VERGEER KESTER LLP

s/ Robert E. Sabido

Robert E. Sabido, WSBA No. 29170
rsabido@cosgravelaw.com
888 SW Fifth Avenue, Suite 500
Portland, OR 97204
Telephone: (503) 323-9000
Fax: (503) 323-9019

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing **NOTICE OF
REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(a)** on the date indicated below by:

- mail with postage prepaid, deposited in the US mail at Portland, Oregon,
 - hand delivery,
 - facsimile transmission,
 - overnight delivery,
 - electronic filing notification

I further certify that said copy was placed in a sealed envelope delivered as indicated above and addressed to said attorneys at the address listed below:

11 Robert Mitchell
Robert Mitchell, Attorney at Law, PLLC
1020 N. Washington St.
12 Spokane, Washington 99021

13 Attorney for Plaintiffs

DATED: November 21, 2018

s/ Robert E. Sabido
Robert E. Sabido

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

KELLY BURNS, TROY BURNS, and the
community property comprised thereof,

NO.

Plaintiff,

SUMMONS

v.

CREDIT CONTROL, L.L.C., a Missouri
Limited Liability Company,

Defendant.

CREDIT CONTROL, L.L.C., a Missouri Limited Liability Company: A lawsuit has been started against you in the above-entitled Court by Plaintiff. Plaintiff's claims are stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and by serving a copy upon the person signing this Summons within twenty (20) days after the service of this Summons, excluding the day of service, or within sixty (60) days if this Summons is served outside the State of Washington, or within forty (40) days if this Summons is served through the Insurance Commissioner's Office, or a default judgment may be entered against you without notice. A default judgment is one where Plaintiff is entitled to what it asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

You may demand that the Plaintiff file this lawsuit with the Court. If you do so, the demand must be in writing and must be served upon the person signing this Summons. Within

SUMMONS - Page 1 of 2

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EXHIBIT A Page 1 of 19

1 fourteen (14) days after you serve the demand, the Plaintiff must file this lawsuit with the Court,
2 or the service on you of this Summons and Complaint will be void.

3 If you wish to seek the advice of an attorney in this matter, you should do so promptly so
4 that your written response, if any, may be served on time.

5 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State
6 of Washington.

7 DATED this 19th day of October, 2018.

8 PLAINTIFF'S COUNSEL

9
10 ROBERT MITCHELL, WSBA No. 37444
11 Robert Mitchell Attorney at Law, PLLC
12 1020 N. Washington St.
13 Spokane, WA 99201
Telephone: (509) 327-2224
bobmitchellaw@yahoo.com

**STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT**

KELLY BURNS, TROY BURNS, and the
community property comprised thereof,

Plaintiff,

v

**CREDIT CONTROL, L.L.C., a Missouri
Limited Liability Company,**

Defendant.

NO.

**PLAINTIFFS' COMPLAINT FOR
INJUNCTIVE RELIEF FOR
VIOLATIONS OF THE CONSUMER
PROTECTION ACT AND THE FAIR
DEBT COLLECTION PRACTICES
ACT. *INTER ALIA***

COME NOW, Plaintiffs, KELLY BURNS, TROY BURNS, and the marital community comprised thereof, by and through their counsel, ROBERT MITCHELL, and complain against the Defendant as follows:

I. STATEMENT OF THE CASE

Defendant, Credit Control, L.L.C. is using unfair and deceptive practices in attempt to deceive Washington consumers about the status of time barred debts. Defendant's collection letters do not contain a date of last payment or date of default. Defendant's letters fail to inform Washington consumers about the drastic consequences associated with paying time barred debt, like: reviving the statute of limitations and renewing an expired credit reporting period. Worse yet, the letters suggest consequences for nonpayment that simply do not exist.

PLAINTIFFS' COMPLAINT

1

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1 Most collectors have moved to the safer method of actually explaining in collection
 2 correspondence that the debt is beyond the statute of limitations, and assuring consumers that
 3 the collector will not file a debt collection lawsuit, even if voluntary payment is not received.
 4 Defendant's collection letters do not explain this to consumers. Instead, Defendant has chosen
 5 to push the envelope. To that end, one Federal Court stated: "...in the general context of
 6 consumer protection - of which the Fair Debt Collection Practices Act is a part-it does not
 7 seem 'unfair to require that one who deliberately goes perilously close to an area of proscribed
 8 conduct shall take the risk that he may cross the line." *Russell v. Equifax A.R.S.*, 74 F.3d 30
 9 (2d Cir. 1996). Defendant crossed the line in this case.

11 Defendant's practices violate the Fair Debt Collection Practices Act at 15 U.S.C.
 12 1692e. See, *McMahon v. LVNV Funding, L.L.C.*, 744 F.3d 1010 (7th Cir. Mar. 11, 2015);
 13 *Buchanan v. Northland Group, Inc.*, 776 F.3d 393 (6th Cir. 2015); *Daugherty v. Convergent
 14 Outsourcing, Inc.*, 836 F.3d 507 (5th Cir. 2016); and *Pantoja v. Portfolio Recovery Associates,
 15 L.L.C.*, 852 F. 3d 679 (7th Cir. 2017), *inter alia*. Defendant's conduct also violates
 16 Washington's Consumer Protection Act at RCW 19.86.090. See, *Panag v. Farmers Ins. Co.*,
 17 166 Wn.2d 27, 204 P.3d 885 (2009). Plaintiffs were injured and damaged by Defendant's
 18 unfair and deceptive conduct. Plaintiffs seek an injunction to stop Defendant from using
 19 similar collection letters to harm other Washington Consumers.

22 II. PARTIES

23 2.1 Plaintiffs, KELLY and TROY BURNS are residents of Spokane County,
 24 Washington.

25 PLAINTIFFS' COMPLAINT

26

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1 2.2 Plaintiffs obtained a credit card from Kohl's, which they used primarily for
2 personal, family, and household purposes.

3 2.3 Defendant alleges that Plaintiffs defaulted on the consumer credit card "debt"
4 by failing to make timely payments.

5 2.4 Plaintiffs are therefore "debtor[s]" as defined by the Fair Debt Collection
6 Practices Act (FDCPA), and "person[s]" as defined by the Consumer Protection Act (CPA),
7 and Plaintiffs acted as "debtor[s]" and "person[s]" at all times relevant to this litigation.

8 2.5 Defendant, CREDIT CONTROL, L.L.C. (hereinafter "Defendant"), is a
9 Missouri Limited Liability Company, a "collection agency," a "debt collector" and a "person,"
10 which regularly collects stale accounts originally owed to others.

11 2.6 Defendant is licensed to engage in business in this state pursuant to UBI No.
12 602621572.

13 2.7 Defendant made attempts to collect the debt at the heart of this case from
14 Plaintiffs.

15 2.8 Defendant has been sued 68 times in federal court alone.

16 **III. JURISDICTION AND VENUE**

17 3.1 Jurisdiction and Venue in Spokane County Superior Court are appropriate
18 where all acts at issue and described herein occurred in Spokane County, Washington, and
19 where the injury to Plaintiff occurred in Spokane County, Washington, and where the
20 Defendant has engaged in substantial business contacts in Spokane County, Washington, and
21 where Defendant has already submitted to this jurisdiction by threatening to take action against
22 Plaintiffs' COMPLAINT

1 Plaintiff in this jurisdiction, and where the Plaintiff prays for injunctive relief that exceeds the
2 jurisdiction of the State District Court. RCW 4.12.020; 4.12.025; 4.28.180; 4.28.185; and
3 7.40.010.

4 3.2 Defendant is liable unto Plaintiffs pursuant to the provisions of the Washington
5 Consumer Protection Act (CPA), RCW 19.86 et seq., and the Fair Debt Collection Practices
6 Act, 15 U.S.C. § 1692, et. seq., as well as other applicable state and federal laws.
7

8 IV. FACTS

9 4.1 Plaintiffs obtained a Kohl's credit card, which they used primarily for personal,
10 family, and household purposes.

11 4.2 Plaintiff, Mr. Burns is disabled.

12 4.3 In approximately 2011, one of Plaintiffs' children became ill, which resulted in
13 substantial medical costs.

14 4.4 Plaintiffs stopped making payments on their Kohl's credit card on or about
15 2011.

16 4.5 At that time, the balance on the account was less than \$1,000.00.

17 4.6 Plaintiffs have not made a payment on their Kohl's card since.

18 4.7 On September 25, 2018, Defendant mailed Plaintiffs a collection letter
19 demanding payment of "\$1,363.74."

20 4.8 The letter does not explain the basis for the added balance.

21 4.9 Defendant's letter then states in pertinent part: "Subject to your rights as set
22 forth below, our client has authorized us to extend you affordable options to resolve this
23 account. Upon completion of one of the options below, this account will be considered
24 resolved."

25 PLAINTIFFS' COMPLAINT

26 4

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1 4.10 The only "rights as set forth below" are payment options.

2 4.11 One of the options is to make "12 consecutive monthly payment(s)" to pay the
3 balance in full.

4 4.12 Defendant chose these letters, words, and phrases to convey the impression that
5 the *only* "rights" Plaintiffs had was to pay the time barred debt.

6 4.13 Plaintiffs were in fact deceived into believing that they needed to pay the time
7 barred debt, pursuant to the "rights" listed in Defendant's collection letter.

8 4.14 Defendant's collection letter further states in pertinent part: "**Take advantage**
9 **of one of these options to move you closer to debt reduction and less financial worry!**"

10 4.15 Defendant chose the phrase "worry!" to instill fear in Plaintiffs that they had
11 something to "worry!" about if they refused to pay the debt.

12 4.16 To pressure Plaintiffs into paying immediately, the very next sentence in the
13 letter states: "**We are not obligated to renew this offer.**"

14 4.17 However, time was not of the essence because the account was past the statute
15 of limitations, and Plaintiffs had nothing to fear from nonpayment because Defendant could no
16 longer sue or credit report to enforce the account.

17 4.18 Nowhere does Defendant's collection letter disclose the date of last payment on
18 the account.

19 4.19 Nowhere does Defendant's collection letter disclose that the account is beyond
20 the statute of limitations.

21 4.20 Nowhere does Defendant's collection letter warn Plaintiffs that making even a
22 partial payment, which is one of the options listed as a "right" in Defendant's collection letter,
23 would revive the statute of limitations for another six years.

4.21 Nowhere does Defendant's collection letter warn Plaintiffs that making even a partial payment, which is one of the options listed as a "right" in Defendant's collection letter, would revive the credit reporting period for another seven years.

4.22 Courts have recommended that debt collectors warn consumers of the consequences of paying time barred debts.

4.23 Many debt collectors have adopted this as a standard practice.

4.24 Defendant chose to press the envelope.

4.25 Plaintiffs were forced to pay to obtain a copy of their consumer credit report to verify that this debt is too old to collect through credit reporting and/or litigation.

4.26 Plaintiff suffered other economic and non-economic injuries and damages as a direct and proximate result of Defendant's unfair and deceptive collection letter.

4.27 Defendant's unfair and deceptive collection letter occurred in trade and commerce.

4.28 Defendant's unfair and deceptive practices have a public impact. See, *Panag v. Farmers Ins. Co.*, 166 Wn.2d 27, 204 P.3d 885 (2009).

4.29 Defendant's unfair and deceptive practices have the capacity for repetition.

4.30 Defendant's unfair and deceptive practices will injure other Washington consumers.

4.30 Defendant's unfair and deceptive practices will injure other Washington consumers.

4.30 Defendant's unfair and deceptive practices will injure other Washington consumers.

V. FAIR DEBT COLLECTION PRACTICES ACT VIOLATION

(Application of the Statute)

5.1 Plaintiffs re-allege paragraphs I. through IV., inclusive as though fully set forth herein.

PLAINTIFFS' COMPLAINT

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5.2 Pursuant to the Fair Debt Collection Practices Act (FDCPA), a “consumer” or “debtor” means “any natural person obligated or allegedly obligated to pay any debt.” 15 U.S.C. § 1692a(3).

5.3 Pursuant to the FDCPA, the term "debt" means: "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." 15 U.S.C. § 1692a(5).

5.4 Pursuant to the FDCPA, the term "debt collector" means: "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6).

5.5 Defendant collection agency is, without a doubt, a "debt collector" as defined by the FDCPA.

5.6 Therefore, the FDCPA applies in this case because the Plaintiff is a “debtor,” the debt at the heart of this case is a “consumer debt,” which arose from a transaction in which the services are primarily for personal, family, or household purposes, and the Defendant collection agency is a “debt collector” which attempted to collect a debt owed to a third party.

VI. FIRST CAUSE OF ACTION

Fair Debt Collection Practices Act Violation
(False, Deceptive, or Misleading Representations)

6.1 Plaintiffs re-allege paragraphs I. through V., inclusive as though fully set forth herein.

PLAINTIFFS' COMPLAINT

1 6.2 The Fair Debt Collection Practices Act (FDCPA) states in pertinent part: "A
 2 debt collector may not use any false, deceptive, or misleading representation or means in
 3 connection with the collection of any debt." 15 U.S.C. § 1692e.

4 6.3 The act further states that the following conduct is a violation of section 1692e:
 5 "The false representation of the character, amount, or legal status of a debt...." 15 U.S.C. §
 6 1692e(2).

7 6.4 The act further states that the following conduct is a violation of section 1692e:
 8 "The threat to take any action that cannot legally be taken or that is not intended to be taken."
 9 15 U.S.C. § 1692e(5).

10 6.5 The act further states that the following conduct is a violation of section 1692e:
 11 "The use of any false representation or deceptive means to collect or attempt to collect any
 12 debt or to obtain information concerning a consumer." 15 U.S.C. § 1692e(10).

13 6.6 In this case, Defendant mailed a collection letter to Plaintiffs in attempt to
 14 collect a time barred debt, with an unlawfully inflated balance. The letter did not disclose how
 15 the debt was increased. The letter did not disclose the date of last payment or that the debt was
 16 beyond the statute of limitations. The letter did not warn Plaintiffs against the drastic
 17 consequences of making a payment on a time barred debt, including reviving the statute of
 18 limitations and reviving the credit reporting period. Instead, Defendant's letter used words and
 19 phrases designed to convey the impression that Plaintiffs' legal rights were limited to payment
 20 of the time barred debt, and that failure to pay the account would result in "worry!" and other
 21 undisclosed consequences.

22 6.7 Defendant therefore violated the statute by falsely representing the character,
 23 amount and legal status of the subject debt.

1 6.8 Defendant therefore violated the statute by issuing veiled threats of actions
2 Defendant could not take to collect this ancient account.

3 6.9 Defendant therefore violated the statute by the use of false representations and
4 deceptive means to attempt to collect the subject debt.

5 6.10 Plaintiffs were injured by Defendant's actions.

6 6.11 Defendant's actions were a direct and proximate cause of Plaintiffs' injuries and
7 damages.

8 6.12 Defendant's actions were intentional, willful, wanton, unfair, unconscionable,
9 and outrageous.

10 6.13 Defendant's actions illustrate why an injunction is necessary to protect Plaintiffs
11 and other Washington debtors from similar harm.

12 **VII. SECOND CAUSE OF ACTION**

13 *(Per Se Consumer Protection Act – State Collection Agency Act Violation)*

14 7.1 Plaintiffs re-allege paragraphs I. through VI., inclusive as though fully set forth
15 herein.

16 7.2 Washington's Consumer Protection Act (hereinafter "CPA") states: "Unfair
17 methods of competition and unfair or deceptive acts or practices in the conduct of any trade or
18 commerce are hereby declared unlawful." RCW 19.86.020.

19 7.3 The Washington CPA applies to the actions at issue herein because the
20 Plaintiffs are "person[s]" and the Defendant is a "person," the complaint involves conduct
21 which occurred in the course of trade/commerce, the Plaintiffs were damaged in their property
22 by Defendant's actions, and the complaint involves a matter of public interest which is capable
23 of repetition and will likely affect other consumers in this state.

25 PLAINTIFFS' COMPLAINT

26 9

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1 7.4 Additionally, the Washington Collection Agency Act (hereinafter "WCAA")
2 prohibits collection agencies from engaging in certain unfair and/or deceptive collection acts or
3 practices. RCW 19.16.250(1 – 25).

4 7.5 Violations of the WCAA are *per se* violations of the Consumer Protection Act
5 (WCPA). RCW 19.16.440.

6 7.6 The "Prohibited Practices" section of the WCAA states in pertinent part that
7 "No licensee or employee of a licensee shall:

8 Give or send to any debtor or cause to be given or sent to any
9 debtor, any notice, letter, message, or form, other than through
10 proper legal action, process, or proceedings, which represents or
11 implies that a claim exists unless it shall indicate in clear and
12 legible type: (a) The name of the licensee and the city, street, and
13 number at which he or she is licensed to do business; (b) The name
14 of the original creditor to whom the debtor owed the claim if such
15 name is known to the licensee or employee: PROVIDED, That
16 upon written request of the debtor, the licensee shall provide this
17 name to the debtor or cease efforts to collect on the debt until this
18 information is provided; (c) If the notice, letter, message, or form
19 is the first notice to the debtor or if the licensee is attempting to
20 collect a different amount than indicated in his or her or its first
21 notice to the debtor, an itemization of the claim asserted must be
22 made including: (i) Amount owing on the original obligation at
23 the time it was received by the licensee for collection or by
24 assignment; (ii) Interest or service charge, collection costs, or late
25 payment charges, if any, added to the original obligation by the
original creditor, customer or assignor before it was received by
the licensee for collection, if such information is known by the
licensee or employee: PROVIDED, That upon written request of
the debtor, the licensee shall make a reasonable effort to obtain
information on such items and provide this information to the
debtor; (iii) Interest or service charge, if any, added by the licensee
or customer or assignor after the obligation was received by the
licensee for collection; (iv) Collection costs, if any, that the
licensee is attempting to collect; (v) Attorneys' fees, if any, that the
licensee is attempting to collect on his or her or its behalf or on the
behalf of a customer or assignor; and (vi) Any other charge or fee

26 PLAINTIFFS' COMPLAINT

10

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1 that the licensee is attempting to collect on his or her or its own
 2 behalf or on the behalf of a customer or assignor; (d) If the notice,
 3 letter, message, or form concerns a judgment obtained against the
 4 debtor, no itemization of the amounts contained in the judgment is
 5 required, except postjudgment interest, if claimed, and the current
 6 account balance; (e) If the notice, letter, message, or form is the
 7 first notice to the debtor, an itemization of the claim asserted must
 8 be made including the following information: (i) The original
 9 account number or redacted original account number assigned to
 10 the debt, if known to the licensee or employee: PROVIDED, That
 11 upon written request of the debtor, the licensee must make a
 12 reasonable effort to obtain this information or cease efforts to
 13 collect on the debt until this information is provided; and (ii) The
 14 date of the last payment to the creditor on the subject debt by the
 15 debtor, if known to the licensee or employee: PROVIDED, That
 16 upon written request of the debtor, the licensee must make a
 17 reasonable effort to obtain this information or cease efforts to
 18 collect on the debt until this information is provided.¹

19 7.7 The "Prohibited Practices" section of the WCAA further states in pertinent part
 20 that "No licensee or employee of a licensee shall: Communicate in writing with a debtor
 21 concerning a claim through a proper legal action, process, or proceeding, where such
 22 communication is the first written communication with the debtor, without providing the
 23 information set forth in subsection (8)(c) of this section in the written communication." RCW
 24 19.16.250(9).

25 7.8 The "Prohibited Practices" section of the WCAA further states in pertinent part
 26 that "No licensee or employee of a licensee shall: Communicate with a debtor or anyone else in
 27 such a manner as to harass, intimidate, threaten, or embarrass a debtor..."

28 7.9 The "Prohibited Practices" section of the WCAA further states in pertinent part
 29 that "No licensee or employee of a licensee shall: Communicate with a debtor or anyone else in
 30 such a manner as to harass, intimidate, threaten, or embarrass a debtor..." RCW 19.16.250(13).

1 ¹ RCW 19.16.250(8)(a – d).

1 7.10 The "Prohibited Practices" section of the WCAA further states in pertinent part
 2 that "No licensee or employee of a licensee shall: Communicate with the debtor and represent
 3 or imply that the existing obligation of the debtor may be or has been increased by the addition
 4 of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such
 5 fees or charges may not legally be added to the existing obligation of such debtor." RCW
 6 19.16.250(15).

7 7.11 The "Prohibited Practices" section of the WCAA further states in pertinent part
 8 that "No licensee or employee of a licensee shall: Threaten to take any action against the
 9 debtor which the licensee cannot legally take at the time the threat is made." RCW
 10 19.16.250(16).

11 7.12 Finally, the "Prohibited Practices" section of the WCAA states in pertinent part
 12 that "No licensee or employee of a licensee shall: Collect or attempt to collect in addition to
 13 the principal amount of a claim any sum other than allowable interest, collection costs or
 14 handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and
 15 taxable court costs." RCW 19.16.250(21).

16 7.13 In this case, Defendant violated both the Washington Collection Agency Act
 17 and the Washington Consumer Protection Act (*per se* violation), by mailing a collection letter
 18 to Plaintiffs in attempt to collect a time barred debt, with an unlawfully inflated balance, and
 19 without stating the date of the last payment. The letter did not disclose how the debt was
 20 increased. The letter did not disclose the date of last payment or that the debt was beyond the
 21 statute of limitations. The letter did not warn Plaintiffs against the drastic consequences of
 22 making a payment on a time barred debt, including reviving the statute of limitations and
 23 reviving the credit reporting period. Instead, Defendant's letter used words and phrases
 24 designed to convey the impression that Plaintiffs' legal rights were limited to payment of the
 25

PLAINTIFFS' COMPLAINT

12

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time barred debt, and that failure to pay the account would result in "worry!" and other undisclosed consequences.

7.14 Defendant's statutory violations are *per se* Consumer Protection Act violations.

7.15 Plaintiffs were injured and damaged by Defendant's unfair and deceptive actions.

7.16 Defendant's actions are a direct and proximate cause of Plaintiffs' injuries and damages.

7.17 Defendant's actions were intentional, willful, wanton, unfair, unconscionable, and outrageous.

7.18 Defendant's actions illustrate why an injunction is necessary to protect Plaintiffs and other Washington debtors from similar harm.

VIII. THIRD CAUSE OF ACTION

(Consumer Protection Act Violation – In the Alternative)

8.1 Plaintiffs re-allege paragraphs I. through VII., inclusive as though fully set forth herein.

8.2 In the alternative to a *per se* violation of Washington's CPA as alleged *Supra*, Defendant's collection actions are still "unfair" and "deceptive" as those terms are ambiguously defined and liberally construed to protect consumers. RCW 19.86.920.

8.3 In this case, Defendant violated the Washington Consumer Protection Act, by mailing a collection letter to Plaintiffs in attempt to collect a time barred debt, with an unlawfully inflated balance, and without stating the date of the last payment. The letter did not disclose how the debt was increased. The letter did not disclose the date of last payment or that the debt was beyond the statute of limitations. The letter did not warn Plaintiffs against the drastic consequences of making a payment on a time barred debt, including reviving the

1 statute of limitations and reviving the credit reporting period. Instead, Defendant's letter used
2 words and phrases designed to convey the impression that Plaintiffs' legal rights were limited
3 to payment of the time barred debt, and that failure to pay the account would result in "worry!"
4 and other undisclosed consequences.

5 8.4 Defendant's collection attempts are unfair and deceptive acts or practices in
6 violation of Washington's Consumer Protection Act.

7 8.5 Defendant committed these unfair and deceptive acts or practices in the conduct
8 of trade or commerce.

9 8.6 Defendant's actions involve a public interest, debt collection. *See, Panag,*
10 *Supra.*

11 8.7 Defendant's actions have the capacity for repetition.

12 8.8 Plaintiffs were injured and suffered actual economic injury and damages as a
13 direct and proximate result of Defendant's unfair and deceptive actions.

14 8.9 Defendant's actions were intentional, willful, wanton, unfair, unconscionable,
15 and outrageous.

16 8.10 Defendant's actions illustrate why an injunction is necessary to protect Plaintiffs
17 and other Washington debtors from similar harm.

18 **IX. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for judgment to be entered against the Defendant as
20 follows:

21 A. For an Injunction preventing Defendant from ever again contacting Plaintiffs for
22 any reason whatsoever, pursuant to RCW 19.86.090, and *Scott v. Cingular Wireless*, 160
23 Wn.2d 843, 161 P.3d 1000 (2007); *Hockley v. Hargitt*, 82 Wash.2d 337, 349-50, 510 P.2d
24 1123 (1973); *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778,

25 PLAINTIFFS' COMPLAINT

26 14

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1 783-84, 719 P.2d 531 (1986); *Lightfoot v. MacDonald*, 86 Wash.2d 331, 335-36, 544 P.2d 88
 2 (1976);

3 B. For an Injunction preventing Defendant from ever sending the offending
 4 collection letter to any other Washington consumer, pursuant to RCW 19.86.090, and *Scott v.*
 5 *Cingular Wireless*, 160 Wn.2d 843, 161 P.3d 1000 (2007); *Hockley v. Hargitt*, 82 Wash.2d
 6 337, 349-50, 510 P.2d 1123 (1973); *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.*
 7 *Co.*, 105 Wash.2d 778, 783-84, 719 P.2d 531 (1986); *Lightfoot v. MacDonald*, 86 Wash.2d
 8 331, 335-36, 544 P.2d 88 (1976);

9 C. For an Injunction preventing Defendant from ever attempting to collect a time
 10 barred debt from a Washington consumer without first informing the consumer that Defendant
 11 cannot sue to enforce the debt, pursuant to RCW 19.86.090, and *Scott v. Cingular Wireless*,
 12 160 Wn.2d 843, 161 P.3d 1000 (2007); *Hockley v. Hargitt*, 82 Wash.2d 337, 349-50, 510 P.2d
 13 1123 (1973); *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778,
 14 783-84, 719 P.2d 531 (1986); *Lightfoot v. MacDonald*, 86 Wash.2d 331, 335-36, 544 P.2d 88
 15 (1976);

16 D. For an Injunction preventing Defendant from ever attempting to collect a time
 17 barred debt from a Washington consumer without first informing the consumer about the legal
 18 consequences associated with making a payment on a time barred debt, pursuant to RCW
 19 19.86.090, and *Scott v. Cingular Wireless*, 160 Wn.2d 843, 161 P.3d 1000 (2007); *Hockley v.*
 20 *Hargitt*, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973); *Hangman Ridge Training Stables,*
 21 *Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 783-84, 719 P.2d 531 (1986); *Lightfoot v.*
 22 *MacDonald*, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

23 E. For an Injunction preventing Defendant from ever mailing a collection letter to
 24 a Washington consumer in attempt to collect a time barred debt without disclosing the date of
 25

1 last payment in the collection letter, pursuant to RCW 19.86.090, and *Scott v. Cingular*
 2 *Wireless*, 160 Wn.2d 843, 161 P.3d 1000 (2007); *Hockley v. Hargitt*, 82 Wash.2d 337, 349-50,
 3 510 P.2d 1123 (1973); *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105
 4 Wash.2d 778, 783-84, 719 P.2d 531 (1986); *Lightfoot v. MacDonald*, 86 Wash.2d 331, 335-36,
 5 544 P.2d 88 (1976);

6 F. For an Injunction preventing Defendant from ever again collecting upon the
 7 subject debt, pursuant to RCW 19.86.090, and *Scott v. Cingular Wireless*, 160 Wn.2d 843, 161
 8 P.3d 1000 (2007); *Hockley v. Hargitt*, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973);
 9 *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 783-84, 719
 10 P.2d 531 (1986); *Lightfoot v. MacDonald*, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

11 G. For an Injunction preventing the licensee, the customer of the licensee, or any
 12 other person who may hereafter legally seek to collect on this claim, from ever being allowed
 13 to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or
 14 any other fees or charges otherwise legally chargeable to the debtor on such claim, pursuant to
 15 RCW 19.86.090, and *Scott v. Cingular Wireless*, 160 Wn.2d 843, 161 P.3d 1000 (2007);
 16 *Hockley v. Hargitt*, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973); *Hangman Ridge Training*
 17 *Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 783-84, 719 P.2d 531 (1986); *Lightfoot*
 18 *v. MacDonald*, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

19 H. For Actual and Compensatory damages in an amount to be proven at trial,
 20 pursuant to RCW 19.86 et seq., 15 U.S.C. § 1692 et seq., and various common law claims;

21 I. For Intentional Infliction of Emotional Distress, or Negligent Infliction of
 22 Emotional Distress damages in the amount of \$25,000.00, per Plaintiff, pursuant to 15 U.S.C. §
 23 1692 et seq.; and *Jackson v. Peoples Credit Union*, 604 P.2d 1025 (1979); and *Baker v. G.C.*
 24 *Servs. Corp.*, 677 F.2d 775 (9th Cir. 1982);

25 PLAINTIFFS' COMPLAINT

16

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J. For Statutory damages in the amount of \$1,000.00, per Plaintiff, pursuant to 15 U.S.C. § 1692, et seq.;

K. For Incidental and Consequential damages in an amount to be proven at trial;

L. For treble any "actual" damages up to the amount of \$25,000.00, per Plaintiff, pursuant to RCW 19.86, et seq.;

M. For costs and reasonable attorney's fees in an amount to be proven at trial, pursuant to 15 U.S.C. § 1692 et seq. and RCW 19.86, et seq.;

N. For interest on the above amounts as authorized by law;

O. For other relief as the Court deems just and equitable; and

P. For leave to amend this complaint as needed and as required, including CR 23 status if discovery proves numerosity and commonality of claims.

X. REQUEST FOR TRIAL BY JURY

Plaintiffs hereby request a trial by jury.

DATED this 19th day of October, 2018.

Respectfully submitted,

ROBERT MITCHELL, WSBA #37444
Attorney for Plaintiffs

PLAINTIFFS' COMPLAINT

17

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